

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**MR. LEO KLEIN
DOCKET NO. 29-2001-0279**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Tuesday, January 22, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

The Petitioner, Mr. Leo Klein, appeared *Pro Se*. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On October 23, 2001 the Indiana Department of Revenue notified the Petitioner that he was prohibited from having any connection with Charity Gaming as described in IC 4-32-1-1 for a period of one (1) year. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) The Petitioner is purported to be an operator and conduct charity gaming for the Floyds Knobs Lions Club (Lions Club) located in New Albany, Indiana.
- 2) According to the charity gaming documents filed with the Department, the Lions Club was to hold its charity gaming events at the Improved Order of Redmen Manzanita Tribe #276 (Improved Order) located in New Albany, Indiana.
- 3) An Agent of the Indiana Department of Revenue's Criminal Investigation Division (CID) traveled to the principal office location given by the Lions Club on its CG-1.
- 4) The Lions Club principal office turned out to be the personal residence of its President.

- 5) The Department's Agent also investigated the address of the Improved Order.
- 6) During the course of the investigation the Department's investigator interviewed the Officers and members of the Improved Order.
- 7) The interviews revealed that they had not signed a lease with the Lions Club.
- 8) The interview with the officers of the Improved Order provided information that they had no agreement to rent their facility to the Lion's Club. They stated that they had given Petitioner the lease for another organization for which he was going to conduct bingo.
- 9) The Improved Order officers told the Department's investigator that they have no intention of leasing their facility to any other organization or individual that doesn't have the authority to sign a lease.
- 10) Petitioner testified on his own behalf.
- 11) Petitioner stated that he did not recognize any of the names of the Improved Order officers the Department's investigator questioned.
- 12) Petitioner stated that he spoke with several gentlemen who were allegedly on the Improved Order's building committee.
- 13) Petitioner contends that the Improved Order was only going to hold the hall for the Lions Club.
- 14) Petitioner argues that he has never broken the law.
- 15) The Department determined that Petitioner's actions constituted a fraud, deceit, and/or a misrepresentation of the actual facts in order to procure a charity gaming license to conduct bingo.
- 16) On October 23, 2001 the Indiana Department of Revenue prohibited Petitioner from having any connection with Charity Gaming for a period of one (1) year pursuant to IC 4-32-12-1(4).

FINDINGS OF FACTS

- 1) The Petitioner was listed as an operator on the Lions Club's CG-1 (Indiana Charity Gaming Qualification Application) and CG-2 (Indiana Department of Revenue Annual Bingo License Application)(See Department's Exhibits A and B respectively).
- 2) According to the President of the Lions Club (Petitioner's only witness), the Petitioner did not have the requisite authority to enter in to a lease agreement on behalf of the Lions Club.
- 3) Petitioner's witness also stated that she filled out the Lions Club CG-1 and CG-2.
- 4) Petitioner's witness contends that she did not read the lease given to her by the Petitioner and attached it to the organizations CG-2.
- 5) Petitioner's witness assumed the lease given to her was valid.
- 6) The lease attached to the Lions Club's CG-2 is a lease between the Manzanita Tribe No. 276 Order of Redmen and the Concerned Senior Citizens.

- 7) The lease agreement attached to the Lions Club CG-2 was not a valid lease.
- 8) The Petitioner, as a representative of Concerned Senior Citizens signed the lease in question.
- 9) The organization Concerned Senior Citizens was denied a charity gaming license by the Department on March 9, 2001 (See Department's Exhibit C).
- 10) The lease was also signed by a Mr. Blair on behalf of the Manzanita Tribe No. 276 Order of Redmen.

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) A lease when used in reference to tangible personal property, means a contract by which one owning such property grants to another the right to possess, use and enjoy it for a specified period of time in exchange for periodic payment of a stipulated price, referred to as rent.
- 3) IC 4-32-12-1(4) provides, "The department may suspend...an individual under this article for any of the following: (4) Commission of fraud, deceit, or misrepresentation."

CONCLUSIONS OF LAW

- 1) The Petitioner's witness stated that the Petitioner was the Chairman of the Bingo Committee for the Lions Club Bingo, but did not have the authority to enter into a lease.
- 2) The lease in question was not dated nor was it for a specific period of time.
- 3) The lease is not legal a document.
- 4) Petitioner having placed his name on a lease purporting to be a representative of the Lions Club, and submitting the lease to the Department with the CG-2 constitutes a material misrepresentation under IC 4-32-12-1.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge holds the following:

Petitioner's appeal is denied. The Department's actions are hereby upheld. Petitioner is prohibited from associating with Charity Gaming for a period of one (1) year from the date this decision is final.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.

Dated: _____
Bruce R. Kolb / Administrative Law Judge